

1 Scott A. Kamber  
2 David A. Stampley  
3 KamberEdelson, LLC  
4 11 Broadway, 22nd Floor.  
5 New York, NY. 10004  
6 Telephone: (212) 920-3072  
7 skamber@kamberedelson.com  
8 dstampley@kamberedelson.com

9 Joseph H. Malley  
10 Law Office of Joseph H. Malley  
11 1045 North Zang Blvd  
12 Dallas, TX 75208  
13 Telephone: (214) 943-6100  
malleylaw@gmail.com

14 David Parisi (SBN 162248)  
15 Suzanne Havens Beckman (SBN 188814)  
16 Parisi & Havens LLP  
17 15233 Valleyheart Drive  
18 Sherman Oaks, California 91403  
19 Telephone: (818) 990-1299  
deparisi@parisihavens.com  
shavens@parisihavens.com

20 Attorneys for Plaintiffs

21 **IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

22 JANE DOE, individually; NELLY VALDEZ-  
23 MARQUEZ, ANTHONY SINOPOLI, PAUL  
24 NAVARRO, individually and on behalf of a  
25 class of similarly situated individuals  
Plaintiffs,

26 v.  
27 NETFLIX, INC., a Delaware Corporation,  
28 and DOES 1 THROUGH 50, inclusive,

Defendants.

CASE No.

JURY DEMAND

CLASS ACTION COMPLAINT FOR:

- 1) Video Privacy Protection Act, 18 U.S.C.  
§ 2710
- 2) Video Privacy Protection Act, 18 U.S.C.  
§ 2710
- 3) California Consumers Legal Remedies  
Act, Civil Code § 1750
- 4) California Customer Records Act, Civil  
Code § 1798.80
- 5) California Unfair Competition Law,  
Business and Professions Code § 17200
- 6) California False Advertising Law,  
Business and Professions Code § 17500
- 7) Unjust Enrichment
- 8) Public Disclosure of Private Facts

1 Plaintiffs Nelly Valdez-Marquez, Anthony Sinopoli, and Paul Navarro, on behalf of  
 2 themselves and all others similarly situated, and Jane Doe on behalf of herself, by and through  
 3 their attorneys, as and for Plaintiffs' complaint and demanding trial by jury, allege as follows  
 4 upon personal knowledge as to themselves and their own acts and observations and, otherwise,  
 5 upon information and belief based on the investigation of counsel, which Plaintiffs believe fur-  
 6 ther investigation and discovery will support with substantial evidence.

7 **I. NATURE OF THE ACTION**

8 1. On October 2, 2006, Netflix perpetrated the largest voluntary privacy breach to  
 9 date, disclosing sensitive and personal identifying consumer information. The information was  
 10 not compromised by malicious intruders. Rather, it was given away to the world freely, and  
 11 with fanfare, as part of a contest intended to benefit its trusted custodian, Netflix.

12 2. This right to privacy does not appear to be significant to Netflix. This lawsuit is  
 13 brought as a class action by and on behalf of similarly situated Netflix subscribers, qualified by  
 14 the class definition and class period, whose privacy was violated by the actions of Netflix, Inc.,  
 15 ("Netflix") pursuant to their contest, "Netflix Prize." Jane Doe, a lesbian, who does not want  
 16 her sexuality nor interests in gay and lesbian themed films broadcast to the world, seeks ano-  
 17 nymity in this action. Paul Navarro files this action to prevent Netflix from going through with  
 18 its announced intentions to make additional disclosures of personal identifying information in-  
 19 cluding, but not limited to, users' video renting history and rating habits.

20 3. Netflix knowingly authorized, directed, ratified, approved, acquiesced, or par-  
 21 ticipated in the disclosure to third parties of the sensitive information and/or personal identify-  
 22 ing information derived from the activity of the Netflix subscribers' online electronic commu-  
 23 nications, when they accessed the Netflix website to rent and rate videos.

24 4. Netflix is an "Electronic Communication Service Provider" to its subscribers  
 25 and knowingly disclosed to third parties the contents of Netflix's subscribers' communications,  
 26 including but not limited to, subscribers' rental and rating videos information, while in elec-

1 tronic storage by that service, for the sole benefit of Netflix, without notice or consent to their  
 2 subscribers.

## 3 II. JURISDICTION AND VENUE

4 5. Venue is proper in this District because Defendant Netflix's Terms of Service  
 5 agreement with its subscribers includes a provision, "Disputes; Governing Law," which states:

6 You and Netflix agree that the United States District Court for the Northern  
 7 District of California and/or the California Superior Court for the County of  
 8 Santa Clara shall have exclusive jurisdiction over any dispute between you  
 9 and Netflix relating in any way to the Netflix service or Web site or these  
 10 Terms of Use. You and Netflix expressly and irrevocably consent to personal  
 11 jurisdiction and venue in these courts.

12 (<http://www.netflix.com/TermsOfUse>.)

13 6. Venue is also proper in this district under 28 U.S.C. § 1391 (b)(2), because a  
 14 substantial part of the events giving rise to the claims raised in this lawsuit occurred in this dis-  
 15 trict. Venue is also proper in California under 28 U.S.C. §§ 1391(b)(1) and (c) because Netflix  
 16 is a corporation whose contacts, as alleged in this Complaint, are sufficient to subject it to per-  
 17 sonal jurisdiction.

18 7. This Court has federal question subject matter jurisdiction over this action pur-  
 19 suant to 18 U.S.C. § 1030, 18 U.S.C. § 2702, 18 U.S.C. § 2710, and 28 U.S.C. § 1331. This  
 20 Court has supplemental jurisdiction over the California State Law claims pursuant to 28 U.S.C.  
 21 § 1367.

22 8. In the alternative, this Court has original jurisdiction over this action pursuant to  
 23 28 U.S.C. § 1332. The aggregate claims of plaintiff and the proposed class members exceed the  
 24 sum or value of \$5,000,000.00.

25 9. This Court has federal question jurisdiction of this action under 28 U.S.C. §1331  
 26 because this action alleges violations of the Video Protection Privacy Act, 18 U.S.C. § 2710, a  
 27 federal statute. The Court has supplemental jurisdiction over the remaining claims under 29  
 28 U.S.C. § 1367.

29 10. Netflix is a Delaware corporation, headquartered in California, and is a citizen  
 30 of the State of California. Plaintiffs are citizens and residents of Texas, and California, and as-

1 sert claims on behalf of a proposed class whose members are domiciled throughout the fifty  
 2 states (including the 49 states besides California) and the U.S. territories. There is minimal di-  
 3 versity of citizenship between proposed class members and the Defendant.

4       11. This Court also has personal jurisdiction over Defendant because (a) a substan-  
 5 tial portion of the wrongdoing alleged in this complaint took place in the State of California; (b)  
 6 Defendant Netflix's principal place of business is located in this state; and (c) Defendant is au-  
 7 thorized to do business here, has sufficient minimum contacts with this state, and/or otherwise  
 8 intentionally availed itself of the markets in this state through the promotion, marketing, and  
 9 sale of its products and/or services in this state, to render the exercise of jurisdiction by this  
 10 Court permissible under traditional notions of fair play and substantial justice.

11       12. This Court has personal jurisdiction over the Defendant Netflix under Cal. Code  
 12 Civ. Proc. § 410.10 because Netflix maintains its corporate headquarters in, and the acts alleged  
 13 herein were committed in the State of California. Netflix is also subject to personal jurisdiction  
 14 in California because Netflix perpetrated the unlawful conduct complained of herein, in part,  
 15 within California; because the unlawful conduct complained of herein causes injury, in part,  
 16 within California; because Netflix regularly conducts or solicits business, rents or leases office  
 17 space within California, engages in other persistent courses of conduct and/or derives substan-  
 18 tial revenue from goods and/or services used or consumed within California; and because Net-  
 19 flix regularly and systematically directs electronic activity into California with the manifested  
 20 intent of engaging in business within California.

21       13. The basis of the conduct complained of was devised, developed, implemented,  
 22 and directed from within in this judicial district in the State of California. The actual informa-  
 23 tion and data collected from Plaintiffs was, without exception, transmitted online to California  
 24 by Netflix subscribers, and released by Netflix to the public from California. Therefore, sub-  
 25 stantial, if not all evidence of wrongdoing as alleged in this complaint is located in this judicial  
 26 district.

1       **III. INTRADISTRICT ASSIGNMENT**

2           14. Defendant Netflix Inc.'s principle executive offices and headquarters are located  
3 in this District at 100 Winchester, Los Gatos, CA 95032. Intra-district assignment to the San  
4 Jose Division is proper.

5       **IV. PARTIES**

6           15. Plaintiff Nelly Valdez-Marquez is a resident of Bexar County, Texas. Valdez-  
7 Marquez is a representative of the "U.S. Resident Class," defined within Class Allegations.

8           16. Plaintiff Anthony Sinopoli is a resident of Los Angeles County, California.  
9 Sinipoli is a representative the U.S. Resident Class and the California Resident Class, defined  
10 within Class Allegations.

11          17. Plaintiff Paul Navarro is a resident of Dallas County, Texas. Navarro is a repre-  
12 sentative of the "U.S. Injunctive Class," defined within Class Allegations.

13          18. Plaintiff Jane Doe is a resident of Franklin County, Ohio and files this action as  
14 an individual.

15          19. Defendant Netflix, Inc. is a Delaware corporation that maintains its headquarters  
16 at 100 Winchester, Los Gatos, California 95032. Netflix does business throughout the United  
17 States and, in particular, does business in State of California and in this County. Netflix oper-  
18 ates as an online DVD and Blu-ray disc rental service network, reported by Netflix on their  
19 website, [www.netflix.com](http://www.netflix.com), as the "world's largest online movie rental service, with more than  
20 more than 10 million subscribers." Netflix is a "video tape service provider," regulated by the  
21 Video Privacy Protection Act, "VPPA," 18 U.S.C. § 2710, meaning "any person, engaged in the  
22 business . . . of rental, sale, or delivery of prerecorded video cassette tapes or similar audio vis-  
23 ual materials." § 2710(a)(4).

1       **V. STATEMENT OF FACTS**

2           **A. Netflix Collected Personal and Confidential Data on Movie Watching History  
3 and Represented that It Was Private**

4       20.      Netflix subscribers access the Netflix website to rent movies, post comments on  
5 the Netflix blog, and post ratings of movies. Netflix invites online subscribers to rate movies  
6 based upon their preferences and Netflix responds by cataloging responses in order to recom-  
7 mend movies that subscribers might prefer.

8       21.      Netflix subscribers provide personal information to Netflix to receive the movies  
9 they choose. Subscribers may also contribute ratings of movies they have viewed. Netflix has  
10 retained subscriber movie rental and rating data since Netflix starting doing business in 1998.

11       22.      Netflix subscribers' movie rental choices constitute personal information that  
12 subscribers reasonably expect will be treated as presumptively confidential and that their rela-  
13 tionships with Netflix are relationships of confidentiality. Netflix has been entrusted with the  
14 confidential, sensitive, and personal information of millions of consumers.

15       23.      To some, renting a movie such as "Brokeback Mountain" or even "The Passion  
16 of the Christ" can be a personal issue that they would not want published to the world. Robert  
17 Bork, once considered for United States Supreme Court, found his video rental history leaked  
18 to the press during debate over his nomination to the Supreme Court. In large part because of  
19 the unauthorized disclosure, the Video Privacy Protection Act was created.

20       24.      Netflix made numerous affirmative representations concerning the measures that  
21 it purportedly had in place to protect the confidential, sensitive, and personal identifying infor-  
22 mation of its subscribers from unauthorized disclosure. Netflix publicly touted its security of  
23 consumer data to isolate its databases from unauthorized access, and represented that it placed  
24 significant emphasis on maintaining a high level of security in order to protect the information  
25 of its customers, touted its "state-of-the-art" security measures and facilities, and claimed to  
26 protect the confidential, sensitive, and personal identifying information of its subscribers.

1       25. At all times relevant to this complaint, Netflix published a privacy statement on  
 2 its website at <http://www.netflix.com/Popup?id=5136>, which stated:

3             This Privacy Policy explains our policy regarding the collection, use and  
 4 disclosure of your personal information. As we update and expand our  
 5 services, this policy may change, so please refer back to it periodically. By  
 6 accessing our Web site or using our services, you consent to our information  
 7 practices.

8             ...

9             Collection and Use of Information

10          Personal information means information that can be used to identify and  
 11 contact you, specifically your name, postal delivery address, e-mail address,  
 12 payment method (e.g., credit card or debit card) and telephone number, as  
 13 well as other information when such information is combined with your  
 14 personal information.

15          When you register or re-register at our Web site, we ask you to supply us  
 16 with personal information so that we can provide, enhance and personalize  
 17 our services and marketing efforts. For similar reasons, we may supplement  
 18 the personal information you provide with publicly available information  
 19 about you.

20          We keep track of your interactions with us, including but not limited to your  
 21 site activity, DVD selections, movie ratings, payment history and  
 22 correspondence as well as any instant movie viewing and related activity. We  
 23 use this information for such purposes as providing recommendations on  
 24 movies we think will be enjoyable, personalizing the site to better reflect  
 25 particular interests, tracking your available instant-viewing hours, helping us  
 26 quickly and efficiently respond to inquiries and requests and otherwise  
 27 enhancing our service offering for our customers. We also provide analyses  
 28 of our users in the aggregate to prospective partners, advertisers and other  
 29 third parties. We may also disclose and otherwise use, on an anonymous  
 30 basis, movie ratings, consumption habits, commentary, reviews and other  
 31 non-personal information about customers.

32             ...

33             Disclosure of Personal Information

34          Except as otherwise disclosed to you, we will not sell, rent or disclose your  
 35 personal information to third parties without notifying you of our intent to  
 36 share the personal information in advance and giving you an opportunity to  
 37 prevent your personal information from being shared.

38        26. Netflix's definition of "personal information," quoted above, encompassed not  
 39 only information such as name, address, account number, and telephone number, but also other  
 40 information, "when such information is combined with your personal information."

41        27. Netflix's privacy policy included the company's commitment to disclose  
 42 changes to its privacy policies and practices, personally contact users regarding material  
 43 changes, and obtain user consent to changes in use:

44             Changes to This Policy

1 As we update and expand our services, we may make changes to this policy.  
2 You should check back for updates to this policy from time to time. If the  
3 changes result in materially less protection for your personal information  
4 than that provided in this policy, we will make reasonable efforts to contact  
5 you and obtain your consent to the changes. Like our Terms of Use, of which  
such changes.

6 28. Netflix was in possession of—and was entrusted with—the confidential, sensi-  
7 tive, and personal identifying information of millions of consumers, its customers. Netflix  
8 held itself out to the public as having particular skills and knowledge in the field of safeguard-  
9 ing such confidential information. Indeed, Netflix would not otherwise be entrusted with such  
10 information.

11 29. Although Netflix touted its privacy protections to induce consumers to become  
12 subscribers, Netflix failed to disclose that it would release the movie titles, genres, rental dates,  
13 and ratings they assigned to movies, along with other information about their rentals—without  
14 consent—as fodder for a contest to improve the predictive value of their recommendation sys-  
15 tem.

16 **B. Netflix Uses Software to Predict Future Movie Watching**

17 30. Netflix offers subscribers recommendations about other movies the subscribers  
18 may be interested in renting. To make these recommendations, Netflix uses its proprietary rec-  
19 ommendation software called “Cinematch.” Netflix’s Cinematch program uses a mathematical  
20 algorithm within its “recommender system” which combines data from a subscriber’s selection  
21 of movies, genres, and ratings of movies, with other subscribers’ similar data, to predict and  
22 “recommend” movie rentals. Cinematch employs collaborative filtering analysis to attempt to  
23 predict which movies will interest a subscriber. Cinematch uses collaborative filtering and  
24 compares an individual subscriber’s information with characteristics of a large number of other  
25 subscribers. The predictive success of Cinematch is important in Netflix’s efforts to increase  
26 revenue through movie rentals and promote user loyalty by providing better recommendations  
27 than its competitors. As stated by Netflix:

1 Netflix is all about connecting people to the movies they love. To help  
 2 customers find those movies, we've developed our world-class movie  
 3 recommendation system: CinematchSM. Its job is to predict whether  
 someone will enjoy a movie based on how much they liked or disliked other  
 movies. We use those predictions to make personal movie recommendations  
 based on each customer's unique tastes.

4 <http://www.netflixprize.com/rules>.

5 **C. Netflix Created a Contest to Improve Its Movie Recommendations**

6 31. In or about October, 2006, in an effort to improve the predictive accuracy of  
 7 Cinematch, Netflix launched a contest offering a million-dollar top prize and other cash prizes  
 8 to contestants who could provide collaborative filtering algorithms that predicted viewers  
 9 movie ratings with greater accuracy than Cinematch. The contest was open to "anyone, any-  
 10 where," with the exception of certain countries, and contestants could enter as teams. To re-  
 11 ceive prize awards, qualifying contestants were required to disclose their analysis methods with  
 12 Netflix and grant Netflix a non-exclusive license to use it. (*See http://www.netflixprize.com*.)

13 32. Netflix provided registered contestants with two sets of data which were alleg-  
 14 edly anonymized:

15 a. Contestants were given access to a "training data set." The training data  
 16 set contained 100 million subscriber movie ratings. The ratings had been submitted by ap-  
 17 proximately 480,000 subscribers between October, 1998 and December, 2005 for approxi-  
 18 mately 18,000 movies. Each of the 100 million rating entries included a numeric identifier  
 19 unique to the subscriber, movie title, movie year of release, date of subscriber rating, and the  
 20 rating of one to five stars assigned by the subscriber.

21 b. Contestants were also given access to a "qualifying data set." The qual-  
 22 ified data set contained 2.8 million ratings. Each entry contained a numeric identifier represent-  
 23 ing the subscriber, movie title, and date of subscriber rating, but it did not include the rating as-  
 24 signed by the subscriber. The actual subscriber ratings for the qualifying data set were known to  
 25 the contest judges, who used the qualifying data set to assess the accuracy of contestants' pre-  
 26 dictions in comparison to Cinematch's results.

1       33. At one point, Netflix announced that 51,051 contestants on 41,305 teams from  
 2 186 different countries were participating in the contest and that Netflix had received 44,014  
 3 valid submissions from 5,169 different teams.

4       34. Netflix terminated distribution of the contest data sets on July 26, 2009.

5           **D. Well Before It Launched the Contest, Netflix Knew of the Risks in Publishing**  
 6           **Anonymized User Data**

7       35. The privacy risk posed by data mining of multiple Internet databases has been  
 8 publicly discussed for nearly a decade. Before Netflix launched its contest, it knew or should  
 9 have known of risk based on the publicized incidents of de-anonymization of databases. (*See,*  
 10 *e.g.*, L. Sweeney. Uniqueness of Simple Demographics in the U.S. Population, LIDAP-WP4.  
 11 Carnegie Mellon University, Laboratory for International Data Privacy, Pittsburgh, PA: 2000  
 12 (available at <http://privacy.cs.cmu.edu/dataprivacy/papers/LIDAP-WP4abstract.html>, regarding  
 13 use of 1990 census data to re-identify of patients in anonymized database released by Massa-  
 14 chusetts Group Insurance.)

15       36. Netflix should also have been aware that, only two months before Netflix  
 16 launched its contest, AOL's research department released a compressed text file containing  
 17 twenty million search keywords for over 650,000 users over a three month period. AOL at-  
 18 tempted to anonymize the data by scrubbing identification data and IP addresses. In that case, it  
 19 was not members of the computer science academic community, but reporters who identified  
 20 individuals represented in the AOL database. (*See*, Barbaro, Michael & Tom Zeller, Jr., "A  
 21 Face Exposed for AOL Searcher No. 4417749," *New York Times*, Aug. 9, 2009). Upon notice of  
 22 the de-anonymization of their data, AOL ceased additional data releases.

23           **E. Netflix Failed to Sufficiently De-Anonymize Its User Data**

24       37. As reported by numerous press outlets, researchers reversed Netflix's anonymi-  
 25 zation process.

26           In a dramatic demonstration of the privacy dangers of databases that col-  
 27 lect consumer habits, two researchers from the University of Texas at Austin  
 28 have shown that a handful of movie ratings can identify a person as easily as a  
 Social Security number.

1           “Releasing the data and just removing the names does nothing for  
 2 privacy. If you know their name and a few records, then you can identify that  
 3 person in the other (private) database.”

4           The researchers -- graduate student Arvind Narayanan and professor  
 5 Vitaly Shmatikov, both from the Department of Computer Sciences at the Uni-  
 6 versity of Texas at Austin -- claim to have identified two people out of the  
 7 nearly half million anonymized users whose movie ratings were released by  
 8 online rental company Netflix last year. The company published the large data-  
 9 base as part of its \$1 million Netflix Prize, a challenge to the world's researchers  
 10 to improve the rental firm's movie-recommendation engine.

11           While Netflix's dataset did not include names, instead using an anonymous  
 12 identifier for each user, the collection of movie ratings -- combined with a  
 13 public database of ratings -- is enough to identify the people, the researchers argued  
 14 in a paper published soon after Netflix released the data, but which only recently came to light. Narayanan and Shmatikov demonstrated the danger by  
 15 using public reviews published by a "few dozen" people in the Internet Movie  
 16 Database (IMDb) to identify movie ratings of two of the users in Netflix's data.

17           Exposing movie ratings that the reviewer thought were private could expose  
 18 significant details about the person. For example, the researchers found that  
 19 one of the people had strong -- ostensibly private -- opinions about some liberal  
 20 and **gay-themed films** and also had ratings for some religious films.

21 Robert Lemos, *SecurityFocus* 2007-12-04, <http://www.securityfocus.com/news/11497>

22           38. Netflix has conceded that identifying subscribers by number instead of name is  
 23 insufficient to protect their identities from being deduced but claimed to have “prevent[ed] cer-  
 24 tain inferences from being drawn by perturbing, or altering data in the contest data sets. It  
 25 sought to quell consumers' privacy concerns and privacy advocates' criticisms by making a  
 26 show of masking the identifiability of the data through a process called “limited perturbation.”

27           39. According to James Bennett, Vice President of Recommendations Systems at  
 28 Netflix and Stan Lanning, developer of Cinematch:

29           To protect some information about the Netflix subscriber base [citation], a  
 30 perturbation technique was then applied to the ratings in that dataset. The  
 31 perturbation technique was designed to not change the overall statistics of  
 32 the Prize dataset. However, the perturbation technique will not be described  
 33 since that would defeat its purpose.

34 (“The Netflix Prize,” KDDCup'07, August 12, 2007, San Jose, California, USA,  
 35 <http://www.cs.uic.edu/~liub/KDD-cup-2007/NetflixPrize-description.pdf>, citing Frankowski, D.,

1     *et al.*, “You Are What You Say: Privacy Risks of Public Mentions,” Proceedings of SIGIR,  
 2     2006.) However, as the level of perturbation increases, the predictive value of the data de-  
 3     creases, which negatively impacts the purpose of the Contest.

4         40.     Since Netflix’s concern was not the subscribers’ privacy, but maximizing the  
 5     benefits of the “Contest” for Netflix, perturbation was limited, at the expense of their subscrib-  
 6     ers’ privacy. (*See* [http://www.cs.utexas.edu/~shmat/shmat\\_oak08netflix.pdf](http://www.cs.utexas.edu/~shmat/shmat_oak08netflix.pdf)).

7         41.     In fact, when the Contest started, Netflix contestants expressed concerns about  
 8     Netflix subscribers’ privacy, concerns heightened by the level of perturbation and level of pri-  
 9     vacy assurances—concerns to which Netflix responded disingenuously and dismissively:

10              **Is there any customer information in the dataset that should be kept  
 11                  private?**

12              No, all customer identifying information has been removed; all that remains  
 13     are ratings and dates. This follows our privacy policy, which you can review  
 14     here. Even if, for example, you knew all your own ratings and their dates  
 15     you probably couldn’t identify them reliably in the data because only a small  
 16     sample was included (less than one-tenth of our complete dataset) and that  
 17     data was subject to perturbation. **Of course, since you know all your own  
 18     ratings that really isn’t a privacy problem is it?**

19              <http://www.netflixprize.com/faq> (emphasis in original).

20         42.     Netflix knew, or should have known, of the privacy risks of releasing their sub-  
 21     scribers’ personal data by merely perturbing “some, but not all” sensitive and personal identify-  
 22     ing information. Individuals and/or entities interested in re-anonymizing the data could merely  
 23     use contextual and background knowledge, in addition to cross-correlation with publicly avail-  
 24     able databases. To re-anonymize the data, individuals and entities with no legitimate interest in  
 25     the Contest could obtain Netflix subscribers data for purposes for re-identification of Netflix  
 26     subscribers, and use such data for nefarious purposes, either commercial, personal, or other-  
 27     wise.

28         43.     On information and belief, discovery will identify such individuals and entities,  
 29     who registered for the contest and acquired the Contest data for their own purposes, separate  
 30     and apart from the Contest.

1           **F. Netflix Knew Early On that Its Subscriber Data Was Not Anonymous, Yet Net-**  
 2           **flix Did Nothing**

3           44. Prior to October 18, 2006, at a time when Netflix claimed to have determined  
 4 that the subscribers' data was perturbed sufficiently, such claims were extinguished when Net-  
 5 flix was informed that the Netflix Prize anonymity was broken. Within 16 days of the initial  
 6 contest launch, Netflix received actual notice that its contest data had been de-anonymized by  
 7 merging contest data with other data sources, such as the Internet Movie Database,  
 8 <http://www.imdb.com>. (See A. Narayanan and V. Shmatikov, *How To Break Anonymity of the*  
 9 *Netflix Prize Dataset*, arXiv:cs/0610105, Oct. 2006.)

10          45. However, unlike AOL, Netflix did not withdraw the contest data. Instead, Net-  
 11 flix simply conceded the possibility of de-anonymization and responded that a contestant who  
 12 utilized an external data would be disqualified from receiving a prize in the contest:

13           [Netflix] Competition judge Charles Elkan at the University of California,  
 14 San Diego, agrees that the method could work if enough Netflix users also  
 15 use IMDB, but he believes it will be possible to detect and disqualify cheats  
 16 when they submit their computer code.

17          See Merali, Zeeya, "Has Netflix given away the answers in its software competition?" Merali,  
 18 Zeeya, *New Scientist*, 2577, November 11, 2006, p.32. Netflix continued to make the contest  
 19 data available, including "for other noncommercial research purposes" such as the KDD Cup  
 20 2007, an annual Data Mining and Knowledge Discovery competition organized by ACM Spe-  
 21 cial Interest Group on Knowledge Discovery and Data Mining.

22           **G. The Second Netflix Contest**

23          46. Netflix has announced a new contest in which the release of subscribers' infor-  
 24 mation includes gender, zip code, and age of their subscribers. Netflix claims perturbation will  
 25 be adequate to protect confidentiality if age is released but not date of birth.

26          47. This sequel is to be the release of a larger database of sensitive and personal in-  
 27 dentifying information that had not been breached, compromised, hacked, stolen, nor acci-  
 28 dently released.

#1 2009-08-06 18:31:12  
 prizemaster

1           Administrator  
 2           From: Netflix HQ  
 3           Registered: 2006-08-29  
 4           Posts: 179

5           **Netflix Prize 2 (Yes, a sequel!)**

6           This is Neil Hunt, Chief Product Officer at Netflix.

7           To everyone who participated in the Netflix Prize: You've made this a truly remarkable contest and you've brought great innovation to the field. We applaud you for your contributions and we hope you've enjoyed the journey. We look forward to announcing a winner of the \$1M Grand Prize in late September.

8           And, like so many great movies, there will be a sequel.

9           The advances spurred by the Netflix Prize have so impressed us that we're planning Netflix Prize 2, a new big money contest with some new twists.

10          Here's one: three years was a long time to compete in Prize 1, so the next contest will be a shorter time limited race, with grand prizes for the best results at 6 and 18 months.

11          While the first contest has been remarkable, we think Netflix Prize 2 will be more challenging, more fun, and even more useful to the field.

12          Stay tuned for more details when we announce the winners of Prize 1 in September.

13          <http://www.netflixprize.com/community/viewtopic.php?id=1520>

14           **H. The Netflix Contests Benefit Netflix but Cost its Subscribers**

15          48.        Netflix did it for the money. Netflix's purpose in sponsoring the Netflix Contest was to obtain the benefit of "crowd-sourcing"—essentially, outsourcing a task to the public at large. For relatively low cost to Netflix, Netflix acquired extremely valuable academic research from highly skilled parties. The results Netflix obtained have significant commercial application and competitive value to Netflix. Netflix sponsored the contest and allowed it to continue in order to obtain this significant benefit for itself, despite the fact that doing so imposed unfair costs on its subscribers.

16          49.        Subscribers who provided personal information in the course of renting and rating movies did not provide such information for Netflix to publicly disclose it in a contest and,

1 in the case of some subscriber transactions, to do so many years later. Nor was Netflix contempl-  
 2 plating the contest when it collected much of the subscriber information used in the contest.  
 3 Thus, all of the subscriber information disclosed in the contest was disclosed for a purpose  
 4 other than that which subscribers provided it and, for the most part, for purposes other than that  
 5 for which Netflix collected it.

6 50. Further, Netflix's use of any subscribers' personal information in the contest was  
 7 not for the purpose of marketing goods or services directly to that subscriber or any other pur-  
 8 pose that provides an exception from the prohibitions of the Video Privacy Protection act, Title  
 9 18, United States Code, Section 2710.

10 51. To the extent Netflix collected any subscriber information in contemplation of  
 11 publicly disclosing it in a contest, Netflix neither disclosed this fact nor obtained subscriber  
 12 consent to such use. Netflix's privacy policy merely states, "We may also disclose and other-  
 13 wise use, on an anonymous basis, movie ratings, consumption habits, commentary, reviews and  
 14 other non-personal information about customers." Netflix's privacy policy also states, "By ac-  
 15 ccessing our Web site or using our services, you consent to our information practices." Neither  
 16 of these states provide notice or establish subscriber consent to the conduct alleged in this com-  
 17 plaint.

18 52. While Netflix's privacy policy does provide notice that Netflix may disclose cer-  
 19 tain "non-personal" information on "an anonymous basis," the contest databases consisted en-  
 20 tirely of personal information. Each movie selection and movie rating transactions was personal  
 21 information, reflecting a particular person's actions on a particular date and linked to the par-  
 22 ticular person by a unique identifier that permitted anyone else to identify all transactions asso-  
 23 ciated with that particular person. The fact that Netflix posted the data sets with unique ID  
 24 numbers in the place of names did not change the fact that it was posting personal information.  
 25 Subscribers' information in the contest data sets could be and was de-anonymized precisely be-  
 26 cause it was personal information.

1       53. Further, nothing in Netflix's privacy policy can be construed to have put sub-  
 2 sscribers on notice of the novel and unusual disclosure that Netflix would later devise—a con-  
 3 test, nor did the privacy policy serve to put subscribers on notice that Netflix would disclose so  
 4 much of their personal information to the general public.

5       54. Netflix subscribers reasonably expected their movie selection and ratings infor-  
 6 mation would only be released where there was a legitimate and compelling need, or as re-  
 7 quired by law, or that Netflix subscribers reasonably expected to be notified of the purpose,  
 8 uses, and intended recipients before it is released, and Netflix determined that subscribers  
 9 whose data was used within the contest should not be offered the right to "opt-in," or to permit  
 10 Netflix use of their data within the Netflix Contest.

11       55. In light of Netflix's conduct in releasing and continuing to disclose subscriber  
 12 data throughout the contest period, Netflix made material misrepresentations and/or material  
 13 omissions likely to affect consumers' choices to use Netflix's service when it stated in its pri-  
 14 vacy policy that:

15           a.       "Personal information means information that can be used to identify and  
 16 contact you . . . as well as other information when such information is combined with your per-  
 17 sonal information."

18           b.       "Except as otherwise disclosed to you, we will not . . . your personal in-  
 19 formation to third parties without notifying you of our intent to share the personal information  
 20 in advance and giving you an opportunity to prevent your personal information from being  
 21 shared."

22           c.       "If changes [to the privacy policy] result in materially less protection for  
 23 your personal information than that provided in this policy, we will make reasonable efforts to  
 24 contact you and obtain your consent to the changes."

25       56. Netflix continued to engage in such material misrepresentations and/or omis-  
 26 sions in that it continued to utter the statements made in its privacy policy while it continued to  
 27  
 28

1 make the contest data sets available after having received actual notice of the risks of de-  
2 anonymization of the contest data.

3 57. Netflix knew, or should have known, of the de-anonymization risks of releasing  
4 subscribers' personal data with limited perturbation of data.

5 58. Netflix knew, or should have known, that third parties with no legitimate interest  
6 in participating in its contest would acquire the contest data for those parties' own purposes of  
7 acquiring information about individuals.

8 59. Netflix was aware of the risk of de-anonymization or re-identification of sub-  
9 scriber ratings data in combination with external data sources, particularly in light of the high  
10 volumes of data being disclosed by Netflix.

11 60. Netflix failed to take precautions to protect personal consumer information from  
12 public disclosure, which caused or was likely to cause substantial injury to Plaintiffs. The per-  
13 sonal consumer information disclosed by Netflix may, in some cases, be combined with other  
14 publicly available data to identify individual consumers or expose them to the risk of identity  
15 theft. This injury is not offset by countervailing benefits to consumers or competition, and is  
16 not reasonably avoidable by consumers. Furthermore, this unfair trade practice runs counter to  
17 public policy. This practice was, and is, an unfair act or practice.

18 61. Netflix's disclosure of subscribers' information was repeated, ongoing, and sys-  
19 temic during the period on or about October 2, 2006 through July 2009.

20 62. Netflix disclosed the personal information of 100 million subscribers to over  
21 51,000 individuals with no effective means of preventing or intent to prevent the further propa-  
22 gation of the information to other individuals.

23 63. Netflix publicly disclosed private facts about subscribers by public disclosing  
24 the contest data sets, which contained details of subscribers' individual, unaggregated movie se-  
25 lection and movie ratings transactions, which are private facts and, because of the public dis-  
26 closure, would be rendered more identifiable, a circumstance which would be offensive and ob-  
27 jectionable to the reasonable person because of the personal and sensitive nature of subscribers'  
28

1 movie selections. The private facts about subscribers disclosed by Netflix were not of any le-  
 2 gitimate public concern.

3 **I. The “Brokeback Mountain” Factor**

4 64. Plaintiffs and class members have a privacy interest and concern for release of  
 5 their sensitive information and personal identifying information.

6 65. Plaintiffs’ and class members’ movie and rating data contain information of a  
 7 more highly personal and sensitive nature. A Netflix member’s movie data may reveal that  
 8 member’s private information such as sexuality, religious beliefs, or political affiliations. Such  
 9 data may also reveal a member’s personal struggles with issues such as domestic violence,  
 10 adultery, alcoholism, or substance abuse.

11 Our secrets, great or small, can now without our knowledge hurtle around the  
 12 globe at the speed of light, preserved indefinitely for future recall in the elec-  
 13 tronic limbo of computer memories. These technological and economic changes  
 14 in turn have made legal barriers more essential to the preservation of our pri-  
 vacy.

15 *Shulman v. Group W*, 18 Cal. 4th 200, 243-244 (1998) (Kennard, J., concurring).

16 66. The Plaintiffs’ and class members’ movie data and ratings, which were released  
 17 without authorization or consent, have now become a permanent, public record on the Internet,  
 free to be manipulated and exposed at the whim of those who have the Database.

18 67. Netflix was attempting to play a semantics game—“personal” information  
 19 meaning pertaining to or concerning a particular person; however personal information is not  
 20 limited to a Netflix subscriber’s name. Netflix subscribers reasonably believe that no record  
 21 would be released showing that they watched a dogmatic, controversial, or sexually explicit  
 22 show, regardless of whether their actual name is known.

23 68. As one article noted about Netflix’s contest and it’s subscriber data, “[f]irst, his  
 24 political orientation may be revealed by his strong opinions about ‘Power and Terror: Noam  
 25 Chomsky in Our Times’ and ‘Fahrenheit 9/11,’ and his religious views by his ratings on ‘Jesus  
 26 of Nazareth’ and ‘The Gospel of John.’ Even though one should not make inferences solely  
 27 from someone’s movie preferences, in many workplaces and social settings opinions about

1 movies with predominantly gay themes such as “Bent” and “Queer as folk” (both present and  
 2 rated in this person’s Netflix record) would be considered sensitive. In any case, it should be  
 3 for the individual and not for Netflix to decide whether to reveal them publicly.” A. Narayanan,  
 4 V. Shmatikov, *How To Break Anonymity of the Netflix Prize Dataset.* arxiv cs/0610105, Oct.  
 5 2006.

6       69.    Netflix subscribers demanded privacy controls within the Netflix website to  
 7 limit access by any party to their viewing habits, including limitations to their friends, let alone,  
 8 access by the “world.”

9              Discussion Thread: Friends - and Connecting to “Strangers”

10              **Anonymous said...**

11              The only way I would ever be willing to participate in any of these community  
 12 features would be if I could remain completely anonymous. This has been men-  
 13 tioned by myself and others a few times on this blog but it doesn't seem to be  
 something Netflix wants to work on.”

14              July 21, 2007 11:31 AM

15              <http://blog.netflix.com/>

16       70.    Netflix failed to protect subscribers’ privacy in any manner, offline, as evident  
 17 by their lack of privacy controls online, including but not limited to, privacy controls, defaults  
 18 settings, opt-in requirements, and the “movie privacy” control that was implemented eight (8)  
 19 years after Netflix was started, provided no additional privacy protections, but did expose Net-  
 20 flix’s knowledge of subscribers’ interest to keep their viewing habits anonymous.

21              **Saturday, July 7, 2007**

22              **Movie Privacy (the sequel to "Hiding Movies")**

23              After your overwhelming response a few weeks ago about keeping your Friends  
 24 from seeing those pesky embarrassing titles (something with *Teletubbies* comes  
 25 to mind, or it could be that lowbrow drive in classic...) we wondered whether  
 there was anything we could do in the short-term to ease the suffering. Every  
 time we had started working on the right implementation in the past, it seemed  
 like the project got tabled for something more pressing. But today your trusty  
 web engineer Mikey showed me that he had built a quick-n-dirty version of  
 Movie Privacy. It's not pretty, but i have to admit, it does the trick.

26              So, in a rather unNetflix-like way, we're just going to release it to Friends users  
 27 in the next week or so. Let's see if this finally allows you to connect to folks you  
 28 know slightly less well (or maybe too well), and for whom you absolutely

1           needed the ability to hide *some* titles. We've all read your comments and  
 2           suggestions for how best to implement this. Trust me: *this isn't that*. It's not that  
 3           we're not hearing your suggestions..."

4           <http://blog.netflix.com/2007/07/hiding-movies-sequel.html>

5           71.     On information and belief, Netflix allowed adversaries, including but not limited  
 6           to, entities with an expertise in "data mining" and "marketing" to obtain the Netflix dataset of  
 7           Plaintiffs' and class members' data.

8           72.     On information and belief, Netflix's failure to properly screen all contestants,  
 9           inability to monitor the use or dissemination of the released data, nor ability to have the dataset  
 10           returned, shall provide a fertile ground for nefarious purposes and substantial and perpetual  
 11           harm to Plaintiffs and class members since the adversaries know what Netflix knows:

12           Monday, September 10, 2007

13           Netflix Knows I'm Gay

14           "OK, so, I got a little email today from Netflix, touting all the bells and whistles  
 15           they have added to their new-fangled "Community" section. So, I jumped over  
 16           to check it out, even though I hardly ever use any of those features ... seriously,  
 17           does anyone?"

18           Anyway, one of the new features is a list of, well, *lists*, made up of movies that  
 19           you may want to watch. Now, being the all-knowing "movie guy" that I am, I  
 20           don't really need Netflix (or Amazon, or Imdb ...) to tell me what to watch, but I  
 21           took a gander anyway and here is what I found, verbatim. (And, I might add, I  
 22           did not make any of this up ... well, except for my catty parenthetical  
 23           comments): [Redacted]...."

24           <http://moviedearest.blogspot.com/2007/09/netflix-knows-im-gay.html>

#### 25           **J. Jane Doe**

26           73.     Plaintiff Doe was a Netflix subscriber who rented and rated movies at times  
 27           relevant to the allegations in this lawsuit.

28           74.     Plaintiff Doe is a lesbian and is a member of a community in which that fact is  
 29           not a matter of general, public knowledge, including at her children's' schools.

30           75.     Netflix, in addition to genre selections ranging from "Action & Adventure" to  
 31           "Thrillers," offers selections in its "Gay & Lesbian" genre, including categories such as Gay &

1 Lesbian Comedies, Gay & Lesbian Dramas, Gay & Lesbian Romance, Foreign Gay & Lesbian,  
2 Indie Gay & Lesbian, Gay, Lesbian, Bisexual, and LOGO.

3       76. Plaintiff Doe believes that information tending to identify or permit inference of  
4 her sexual orientation constitutes sensitive and personal information. She believes that, were  
5 her sexual orientation public knowledge, it would negatively affect her ability to pursue her  
6 livelihood and support her family and would hinder her and her children's' ability to live peace-  
7 ful lives within Plaintiff Doe's community.

8       77. On a number of occasions, Plaintiff Doe has rented movies listed in the "Gay &  
9 Lesbian" section of Netflix's movie categories. On other occasions, she has searched for and  
10 rented specific titles of movies that would be considered to be "gay-themed."

11       78. Plaintiff Doe expects that, due the nature of Netflix's business, she is entitled to  
12 expect Netflix to treat her personal information as information obtained in the context of a rela-  
13 tionship of confidentiality.

14       79. Plaintiff Doe does not want her movie selection or rating transactions to be in-  
15 cluded in any public disclosure of data for purposes such as the Netflix contest, regardless of  
16 any attempts by Netflix to anonymize or perturb the data.

17       80. Plaintiff Doe does not believe that any statements in the Netflix Terms of Use or  
18 Netflix Privacy Policy at the time she became a subscriber or at any time since then constitute  
19 notice that Netflix might include her personal information in a publicly disclosed contest data  
20 set.

21       81. Plaintiff Doe does not believe that, by her using Netflix's website and services,  
22 she has given any explicit or implicit consent to Netflix's use of her personal information in a  
23 contest data set.

24       82. Plaintiff Doe would not have rated any movies on Netflix had she known that  
25 doing so might cause her personal information to be included in a contest data set.

26       83. Plaintiff Doe will be irreparably harmed by Netflix's disclosure of her informa-  
27 tion in its upcoming contest.  
28

1       **VI. CLASS ALLEGATIONS**

2       84. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs Nelly Valdez-  
 3 Marquez, and Anthony Sinopoli bring this action on behalf of the following class:

4                  All Netflix subscribers that rented a Netflix movie and also rated  
 5                  a movie on the Netflix website during the period of October 1998  
 6                  through December 2005, residing in the United States (“U.S.  
 7                  Resident Class”).

8       85. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Anthony Sinopoli also  
 9 bring this action on behalf of the following subclass:

10                 All Netflix subscribers that rented a Netflix movie and also rated  
 11                 a movie on the Netflix website during the period of October 1998  
 12                 through December 2005, residing in California (“California Resi-  
 13                 dent Class”). All California Resident Class members are also  
 14                 members of the U.S. Resident Class.

15       86. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Paul Navarro brings  
 16 this action on behalf of the following class:

17                 All Netflix subscribers since 2006, residing in the United States  
 18                 (“U.S. Injunctive Class”).

19       87. On behalf of the Classes, Plaintiffs seek equitable relief, damages and injunctive  
 20 relief pursuant to:

- 21                 a.         Video Privacy Protection Act, 18 U.S.C. § 2710(c) (the “VPPA”);
- 22                 b.         Video Privacy Protection Act, 18 U.S.C. § 2710 (e).
- 23                 c.         California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et*  
 24 *seq.*; and
- 25                 d.         California False Advertising Law, Cal. Bus. & Prof. Code § 17500, *et*  
 26 *seq.*
- 27                 e.         Common-law privacy tort of Public Disclosure of Private Facts.

1       88. On behalf of the California Resident Class, in addition to the relief described  
 2 above, Plaintiffs seek equitable relief, damages and injunctive relief pursuant to:

3           a. California Customer Records Act, Cal. Civ. Code § 1798.80, *et seq.*;

4       89. On behalf of the Injunctive Class, Plaintiffs seek only injunctive relief.

5       90. **Persons Excluded From Classes:** Excluded from the classes are 1) any Judge  
 6 or Magistrate presiding over this action and members of their families; 2) Defendants, Defen-  
 7 dants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants or  
 8 their parents have a controlling interest and their current or former employees, officers and di-  
 9 rectors; and 3) persons who properly execute and file a timely request for exclusion from the  
 10 class and 4) the legal representatives, successors or assigns of any such excluded persons.

11       91. Plaintiffs reserve the right to revise these class definitions of the classes based  
 12 on facts they learn during discovery.

13       92. **Numerosity:** The exact number of class members is unknown and is not avail-  
 14 able to Plaintiffs, but it is clear that individual joinder of all class members is impracticable.  
 15 On information and belief, Netflix reported membership of about five (5) million members in  
 16 2006 and claimed half of members rated movies: thus the U.S. Resident Class and Injunctive  
 17 Relief Class shall consist of about 2.5 million Netflix subscribers. According to recent U.S.  
 18 Census estimates, approximately 12% of the US population resides in California. Assuming  
 19 that Netflix's subscribers are distributed evenly across the US population, there are approxi-  
 20 mately 300,000 Netflix subscribers residing in California. Class members can be easily identi-  
 21 fied through Netflix's records.

22       93. **Commonality:** Common questions of fact and law exist as to all class members  
 23 and predominate over the questions affecting only individual class members. These common  
 24 questions include:

25           a) What was the Netflix Contest and how did it work?;

26           b) What information did the Netflix Contest release to the Netflix contestants?;

27           c) Was there proper or any notice, of the operation of the Netflix Contest to

1 consumers?

- 2 d) Was there proper or any opportunity to decline the operation of the Netflix  
3 Contest provided to consumers?
- 4 e) Whether Netflix subscribers, by virtue of their membership, had pre-  
5 consented to the operation of the Netflix Contest?;
- 6 f) Whether Netflix owed the class members a duty by its collection of personal  
7 information under the Privacy Policy?;
- 8 g) Whether Netflix breached such duties through the violation of its Privacy  
9 Policy?;
- 10 h) Whether Netflix breached such duties through the violation of its Terms of  
11 Service?;
- 12 i) Whether Netflix failed to fully and accurately disclose the provisions  
13 relating to having their class members' movie rentals and /or ratings released  
14 to third parties or others?;
- 15 j) Whether, in light of its duties, Netflix's failure to disclose any release of  
16 subscribers' movie rentals and ratings to class members breach violated its  
17 duties to the class members?;
- 18 k) Whether any Netflix contestants obtained the movie rentals and ratings  
19 information for nefarious purposes?;
- 20 l) Whether Netflix's Privacy Policy represented that Netflix's services have  
21 characteristics, uses, and benefits, which they do not possess, in violation of  
22 the Netflix Privacy Policy?;
- 23 m) Whether Netflix's Terms of Service represented that Netflix's services have  
24 characteristics, uses, and benefits, which they do not possess, in violation of  
25 the Netflix Terms of Service?;
- 26 n) Whether Netflix's Privacy Policy represented that Netflix's services were of  
27 a particular standard or quality which they were not, in violation of the
- 28

1 Privacy Policy?;

- 2 o) Whether, in light of the release of data of U.S. Resident Class members'
- 3 movie rentals and ratings, Netflix's conduct was a deceptive under the
- 4 practice?;
- 5 p) Whether Netflix's release of the subscribers' data, to third parties, was in
- 6 violation of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030, et seq.?;
- 7 q) Whether Netflix's release of the subscribers' data, to third parties, was in
- 8 violation of the Electronic Communications Privacy Act, 18 U.S.C. § 2702,
- 9 et seq.?;
- 10 r) Whether Netflix's release of the subscribers' data, to third parties, was in
- 11 violation of the Video Protection Privacy Act, 18 U.S.C. § 2710, et seq.?;
- 12 s) Did the operation, function, and/or implementation of the Netflix Contest
- 13 violate the VPPA?;
- 14 t) Whether Plaintiffs and members of the class are entitled to damages and/or
- 15 restitution and the appropriate measure of damages?; and
- 16 u) Whether Plaintiffs and members of the class are entitled to injunctive and
- 17 other equitable relief?

18 94. Common questions of fact and law exist as to all U.S. Injunctive Class mem-  
19 bers and predominate over the questions affecting only individual U.S. Injunctive Class mem-  
20 bers. These common questions include those questions listed above as well as the following:

- 21 a) Whether Netflix will violate the VPPA if Netflix discloses subscribers' data,  
22 as contemplated?;
- 23 b) Whether a preliminary injunction is required to restrain Defendants, their  
24 officers, agents, servants, employees, and attorneys, and those in active  
25 concert or participation with any of them from transmitting any information  
26 about U.S. Injunctive Class Plaintiffs or class members, including but not  
27 limited to, video purchases, preferences, ratings, zip code, age and/or gender

- of Netflix subscribers to any third party?;
- c) Whether a preliminary injunction is required to restrain Defendants, their officers, agents, servants, employees, and attorneys, and those in active concert or participation with any of them from transmitting any information about Plaintiffs' or class members' video purchases, preferences, and ratings without fair, clear and conspicuous notice of the intent to transmit information, including a full description of all information for transmission?; and
- d) Whether a preliminary injunction is required to restrain Defendants, their officers, agents, servants, employees, and attorneys, and those in active concert or participation with any of them from transmitting any information about Plaintiffs' or class members' video purchases, preferences, and ratings to any other websites, including Netflix without fair, clear and conspicuous opportunity to decline the transmittal prior to any transmission of data or information?

95. **Typicality:** Plaintiff's claims are typical of the claims of other Class members, as Plaintiff and other Class members sustained damages arising out of the wrongful conduct of Defendant, or are threatened to sustain damage, based upon the same transactions which were made uniformly to Plaintiff and the public.

96. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs are familiar with the basic facts that form the bases of the proposed class members' claims. Plaintiffs' interests do not conflict with the interests of the other class members that they seek to represent. Plaintiffs have retained counsel competent and experienced in class action litigation and intend to prosecute this action vigorously. Plaintiffs' counsel has successfully prosecuted complex actions including consumer protection class actions. Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the interests of the class members.

1       97. **Superiority:** The class action device is superior to other available means for  
2 the fair and efficient adjudication of the claims of Plaintiffs and the proposed class members.  
3 The relief sought per individual member of the class is small given the burden and expense of  
4 individual prosecution of the potentially extensive litigation necessitated by the conduct of De-  
5 fendant. Furthermore, it would be virtually impossible for the class members to seek redress  
6 on an individual basis. Even if the class members themselves could afford such individual litiga-  
7 tion, the court system could not.

8       98. Individual litigation of the legal and factual issues raised by the conduct of De-  
9 fendant would increase delay and expense to all parties and to the court system. The class ac-  
10 tion device presents far fewer management difficulties and provides the benefits of a single,  
11 uniform adjudication, economies of scale and comprehensive supervision by a single court.

12       99. Given the similar nature of the class members' claims and the absence of mate-  
13 rial differences in the state statutes and common laws upon which the class members' claims  
14 are based, the Classes will be easily managed by the Court and the parties.

15       100. The court may be requested to also incorporate subclasses of Plaintiffs, defen-  
16 dants, or both, in the interest of justice and judicial economy.

17       101. In the alternative, the class may be certified because:

- 18           a) the prosecution of separate actions by the individual members of the class  
19              would create a risk of inconsistent or varying adjudication with respect to  
20              individual class members which would establish incompatible standards of  
21              conduct by defendant;
- 22           b) the prosecution of separate actions by individual class members would create  
23              a risk of adjudications with respect to them which would, as a practical  
24              matter, be dispositive of the interests of other class members not parties to  
25              the adjudications, or substantially impair or impede their ability to protect  
26              their interests; and
- 27           c) Defendants have acted or refused to act on grounds generally applicable to

the class, thereby making appropriate final and injunctive relief with respect to the members of the class as a whole.

102. For these reasons, the proposed Classes may be certified under Rule 23 of the Federal Rules of Civil Procedure.

## **Count I:**

## **Disclosure of Video Records**

## **Violation of the Video Privacy Protection Act**

18 U.S.C. § 2710

(By Jane Doe individually, U.S. Resident Class and Injunctive Relief Class)

10       103. Plaintiffs and class members repeat and incorporate herein by reference the al-  
11 legations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs  
12 bring this cause of action on behalf of themselves, the U.S. Resident Class and the Injunctive  
13 Relief Class.

14       104. Based on the conduct alleged above, Netflix is a video tape service provider  
15 that disclosed and represented that it will further disclose subscribers' personally identifiable  
16 information, in that the VPPA defines "personally identifiably information" as that which  
17 "identifies a person as having requested or obtained specific video materials or services from a  
18 video tape service provider" and defines a "video tape service provider" as "any person, en-  
19 gaged in the business, in or affecting interstate or foreign commerce, of rental, sale or delivery  
20 of prerecorded video cassette tapes or similar audiovisual materials."

21        105. Netflix's disclosures in publishing the contest data sets included and are to in-  
22 clude the titles of movies, is and was not for the purpose of marketing goods or services to the  
23 particular subscribers, are and were the subjects of the disclosed data, is and was not with sub-  
24 scribes' written consent, and is and was not in the ordinary course of Netflix's business.

25       106. As alleged herein, Netflix has knowingly disclosed and will continue to dis-  
26 close personally indentifying information pertaining to Plaintiffs and class members, in viola-  
27 tion of 18 U.S.C. § 2710.

107. Plaintiffs and members of the U.S. Resident Class have suffered harm as a result of Netflix's violations of 18 U.S.C. § 2710, and Plaintiff Doe and members of the Injunctive Relief Class will suffer harm, including paying service and other fees and charges to Netflix and suffering the public disclosure of their private information and the consequences thereof.

108. The VPPA permits any person aggrieved by a violation of its disclosure rules to bring a civil action for damages in a federal court. Each incident in which Netflix provided personally identifiable information regarding a Netflix member as having requested or obtained specific video materials or services from Netflix is a separate and distinct violation of the VPPA, subject to the remedies provided under the VPPA, and specifically pursuant to 18 U.S.C. § 2710(c). Accordingly, Plaintiffs and members of the Classes seek preliminary and permanent injunctive, declaratory, and equitable relief as may be appropriate; statutory damages, actual damages, and disgorgement of any profits made by Netflix as a result of this violation, but no less than \$2,500 for each aggrieved Plaintiff or class member; punitive damages as the Court considers just; and reasonable attorney's fees and other litigation costs.

## Count II:

## **Retention of Video Records**

## **Violation of the Video Privacy Protection Act**

18 U.S.C. § 2710

(By Jane Doe individually, U.S. Resident Class and Injunctive Relief Class)

109. Plaintiffs and class members repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs bring this cause of action on behalf of themselves, the U.S. Resident Class and the Injunctive Relief Class.

110. On or before October 2, 2006 continuing through July 9, 2009, Defendant violated the Video Privacy Protection Act, Title 18, United States Code, section 2710(e), which requires a videotape service provider to destroy consumers' personally identifiable information

1 no later than one year from the date the information is no longer necessary for the purpose for  
 2 which it was collected, in that:

3           a.       Defendant has retained subscribers' movie rental and movie rating data  
 4 since 1998;

5           b.       Subscribers did not provide movie rental and movie rating personal in-  
 6 formation for purposes of Netflix's publicly disclosing that information, in unaggregated form,  
 7 in a contest;

8           c.       Netflix did not collect such movie rental and movie rating personal in-  
 9 formation from subscribers for purposes of using such information in a contest; and

10          d.       Subsequent to Netflix's collection of such information, it did not seek or  
 11 obtain Subscribers' explicit consent to continue to retain such information and disclose it, pub-  
 12 licly, and in unaggregated form, in a contest.

13          111. Pursuant to 18 U.S.C. § 2710, which provides a civil action for any person ag-  
 14 grieved by a knowing or intentional violation of 18 U.S.C. § 2710, and because the violations  
 15 set forth in this Count are comprised of different acts than the violations set forth in Count I,  
 16 Plaintiffs and members of the Classes here separately seek preliminary and permanent injunc-  
 17 tive, declaratory, and equitable relief as may be appropriate; statutory damages, actual dam-  
 18 ages, and disgorgement of any profits made by Netflix as a result of this violation, but no less  
 19 than \$2,500 for each aggrieved Plaintiff or class member; punitive damages as the Court con-  
 20 siders just; and reasonable attorney's fees and other litigation costs.

### 21                   **COUNT III**

#### 22                   **Fraudulent, Unfair, and Deceptive Business Practices**

#### 23                   **Violation of the California Consumers Legal Remedies Act**

24                   **Cal. Civ. Code § 1750, et seq.**

25                   **(U.S. Resident Class and Injunctive Relief Class)**

26          112. Plaintiffs and class members repeat and incorporate herein by reference the al-  
 27 legations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs  
 28

1 bring this cause of action on behalf of themselves, the U.S. Resident Class and the Injunctive  
2 Relief Class.

3       113. California Civil Code § 1770 (the “Consumer Legal Remedies Act”) prohibits  
4 unfair methods of competition and unfair or deceptive acts or practices which result in the sale  
5 of goods or services to any consumer that are unlawful. Cal. Civ. Code § 1770 prohibits,  
6 among other unlawful acts or practices:

7                 (a)(5) Representing that goods or services have sponsorship, approval, charac-  
8 teristics, ingredients, uses, benefits, or qualities which they do not have . . .

9                 (a)(7) Representing that goods or services are of a particular standard, quality,  
10 or grade, or that goods are of a particular style or model, if they are of another.

11       114. Netflix has violated Cal. Civ. Code §§ 1770(a)(5) and (7) by engaging in unfair  
12 methods of competition or unfair or deceptive acts or practices including, but not limited to the  
13 following:

14                 a.       Representing that Netflix uses secure technology, privacy protection  
15 controls and restrictions on employee access in order to safeguard its members' personal in-  
16 formation;

17                 b.       Representing that Netflix will keep its members fully informed, about  
18 what it does with its members' personal information;

19                 c.       Representing that Netflix's Internet service is safe, secure, and private;

20                 d.       Representing that Netflix will not share a member's Netflix network in-  
21 formation with any third parties;

22                 e.       Representing that Netflix will not share a member's Netflix network in-  
23 formation in a manner that personally identifies a user; and

24                 f.       Other unfair, unconscionable, deceptive, or fraudulent conduct as al-  
25 leged above.

26       115. On information and belief, without the knowledge or consent of its members,  
27 Netflix is continuing to gather personally identifiable information and there is no indication  
28

that Netflix will stop this conduct in the future. Netflix's unlawful and unfair business practices will continue to cause members of the Classes.

116. Pursuant to Cal. Civ. Code §§ 1780 and 1781, the Class members seek an order enjoining Defendant's Consumer Legal Remedies Act violations alleged herein and the imposition of a constructive trust on and restitution of property gained by the CLRA violations, and court costs and attorney's fees under the CLRA (Cal. Civ. Code § 1780(d)).

## COUNT IV

## Fraudulent, Unfair, and Deceptive Business Practices

## **Violation of the California Customer Records Act**

**Cal. Civ. Code § 1798.80, et seq.**

## **(California Resident Class)**

117. Plaintiffs and class members repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs bring this cause of action on behalf of themselves and the California Resident Class.

118. Cal. Civ. Code § 1798.81 requires that a business take all reasonable steps to  
destroy or arrange for the destruction of a customer's records within its custody or control  
which contain personal information which is no longer to be retained by the business. This  
may be done by erasing the information or modifying the personal information in those re-  
cords to make it unreadable or undecipherable through any means.

119. Cal. Civ. Code § 1798.81.5 requires businesses to implement and maintain reasonable security procedures to protect the personal information of their customers.

120. Netflix's release of subscriber data without the appropriate protections or modifications to protect personal information contained in the database as alleged herein violated Cal. Civ. Code §§ 1798.81 and 1798.81.5.

121. Pursuant to Cal. Civ. Code § 1798.84, the California Resident Class Plaintiffs and members seek damages, including statutory damages of \$3,000 per violation together with injunctive relief. The California Resident Class Plaintiffs and class members also seek attorney's fees and costs.

1 ney's fees pursuant to Cal. Code Civ. Proc. § 1021.5, as well as such other and further relief as  
 2 the Court deems just and proper.

3 **COUNT V**

4 **Untrue or Misleading Statements**

5 **Violation of the California False Advertising Law**

6 **Cal. Bus. & Prof. Code § 17500, *et seq.***

7 **(U.S. Resident Class and Injunctive Relief Class)**

8 122. Plaintiffs and class members repeat and incorporate herein by reference the al-  
 9 legations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs  
 10 bring this cause of action on behalf of themselves, the U.S. Resident Class and the Injunctive  
 11 Relief Class.

12 123. The acts, omissions, and practices of Netflix alleged herein include untrue or  
 13 misleading statements made in connection with the provision of services which were known,  
 14 or which by the exercise of reasonable care should have been known, to be untrue or misleading,  
 15 in violation of Cal. Bus. & Prof. Code § 17500, *et seq.* These untrue or misleading state-  
 16 ments include, but are in no way limited to, the following:

17 a. Representing that Netflix uses secure technology, privacy protection  
 18 controls and restrictions on employee access in order to safeguard its members' personal in-  
 19 formation;

20 b. Representing that Netflix will keep its members informed, clearly and  
 21 prominently, about what it does with its members' personal information;

22 c. Representing that Netflix's Internet service is safe, secure, and private;

23 d. Representing that Netflix will not share a member's Netflix network in-  
 24 formation with any third parties not contemplated by the Netflix Privacy Policy;

25 e. Representing that Netflix will not share a members Netflix network in-  
 26 formation in a manner that personally identifies a user; and

27 f. Other untrue or misleading statements as alleged above.

124. Plaintiffs and members of the classes have suffered harm and lost money or property as a result of Netflix 's violations of California Business and Professions Code § 17500, *et seq.*, including paying service and other fees and charges to Netflix and suffering the public disclosure and anticipated disclosure of their private information.

125. Pursuant to Cal. Bus. & Prof. Code § 17535, Plaintiffs and the members of the classes seek restitution, disgorgement, injunctive relief and all other relief from Defendant allowed under Cal. Bus. & Prof. Code § 17500, *et seq.* Plaintiffs and members of the classes also seek attorney's fees pursuant to Cal. Code Civ. Proc. § 1021.5, as well as such other and further relief as the Court deems just and proper.

## COUNT VI

## **Fraudulent, Unfair, and Deceptive Business Practices**

## **Violation of the California Unfair Competition Law**

**Cal. Bus. & Prof. Code § 17200, et seq.**

## **(U.S. Resident Class and Injunctive Relief Class)**

126. Plaintiffs and class members repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs bring this cause of action on behalf of themselves, the U.S. Resident Class and the Injunctive Relief Class.

127. By engaging in the acts and practices described herein, Defendant has committed one or more unfair business practices within the meaning of Cal. Bus. & Prof. Code §§ 17200, *et seq.*

128. The acts, omissions, and practices alleged in the Complaint constitute a continuous course of unfair, unlawful, and/or fraudulent business practices within the meaning of Cal. Bus. & Prof. Code § 17200, *et seq.* including, but in no way limited to, the following:

- a. violation of 18 U.S.C. §§ 2710, *et seq.*;
  - b. violation of 18 U.S.C. §§ 2702(a)(1) and/or (a)(2);
  - c. violation of Cal. Bus. & Prof. Code § 22575, *et seq.*;

- d. violation of Cal. Civ. Code § 1750, *et seq.*;
  - e. violation of Cal. Bus. & Prof. Code § 17500, *et seq.*;
  - f. violation of Cal. Civ. Code § 1798.80, *et seq.*;
  - g. public disclosure of private facts and other conduct in violation of the
  - h. Other unfair, unconscionable, misleading, or fraudulent conduct as al-

129. Plaintiffs and the class members have suffered harm and loss of money or property as a result of such unfair and unlawful business practices, including paying the service and other fees and charges to Netflix and suffering the public disclosure and anticipated disclosure of their private information.

130. On information and belief, without the knowledge or consent of its members, Netflix is continuing to gather personally identifiable information and there is no indication that Netflix will stop this conduct in the future. Netflix's unlawful and unfair business practices will continue to cause Plaintiffs and members of the classes harm.

131. Pursuant to Cal. Bus. & Prof. Code § 17204, Plaintiffs and the class members seek restitution, disgorgement, injunctive relief and all other relief from Defendant allowed under Cal. Bus. & Prof. Code § 17200, *et seq.* Plaintiffs and the class members also seek attorney's fees pursuant to Cal. Code Civ. Proc. §1021.5, as well as such other and further relief as the Court deems just and proper.

COUNT VII

## **Unjust Enrichment**

(By Jane Doe individually, U.S. Resident Class and Injunctive Relief Class)

132. Plaintiffs and class members repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs bring this cause of action on behalf of themselves, the U.S. Resident Class and the Injunctive Relief Class.

133. Netflix benefited from its unlawful acts through the receipt of payments for Internet service from Plaintiffs and other members of the Classes. It would be inequitable for Netflix to be permitted to retain the benefit of these service fees, which were conferred by Plaintiffs and retained by Netflix.

134. Netflix continues to benefit from their unlawful acts through the receipt of payments in connection with its proprietary search engine, which continues to index websites associated with the subscriber data. It would be inequitable for Defendant to be permitted to retain the benefit of these monies.

135. Plaintiffs are entitled to the establishment of a constructive trust consisting of the benefit to Netflix of such payments from which Plaintiffs and members of the Classes may make claims on a pro-rata basis for restitution.

## COUNT VIII

## **Public Disclosure of Private Facts**

**(U.S. Resident Class)**

136. Plaintiffs and class members repeat and incorporate herein by reference the allegations in the preceding paragraphs of this Complaint, as if set forth fully herein. Plaintiffs bring this cause of action on behalf of themselves and the U.S. Resident Class.

137. By its conduct, Netflix has knowingly and intentionally caused the public disclosure of private facts concerning Plaintiffs and members of the U.S. Resident Class. These private facts are ones that a reasonable person would not wish disclosed and that are not newsworthy.

138. Netflix's public disclosure of Plaintiffs' and class members' movie selections and ratings, which constitute personal and sensitive information,

139. Plaintiffs and members of the U.S. Resident Class have suffered harm as a result of Netflix's public disclosure of private facts about them.

140. Plaintiffs and members of the U.S. Resident Class are entitled to actual and punitive damages and injunctive relief for these torts.

### **Prayer for Relief**

**WHEREFORE**, Plaintiffs and the class members respectfully pray that the Court enter judgment in their favor as follows:

1. Declaring that this action is a proper class action both nationwide and in California and certifying Plaintiffs as the representatives of their respective Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure;
  2. Declaring that Netflix has violated and is in violation of the Video Privacy Protection Act, 18 U.S.C. § 2710, (the “VPPA”), relating to the U.S. Resident Class and California Resident Class;
  3. Declaring that Netflix has violated and is in violation of Cal. Civ. Code § 1770, et seq.;
  4. Declaring that Netflix has violated and is in violation of Cal. Civ. Code § 1798.80, et seq.;
  5. Declaring that Netflix has violated and is in violation of Cal. Bus. & Prof. Code § 22575, et seq.,
  6. Declaring that Netflix has violated and is in violation of Cal. Bus. & Prof. Code § 17500, et seq.;
  7. Declaring that Netflix has violated and is in violation of Cal. Bus. & Prof. Code § 17200, et seq.;
  8. Awarding U.S. Resident and California Resident Class Plaintiffs statutory and actual damages;
  9. Awarding Plaintiffs and the Classes injunctive relief, including but not limited to, ensuring that Netflix no longer stores or maintains records of any kind associated with subscribers; movie rentals, preferences, and ratings for purposes not contemplated by the Netflix’s Terms of Service;

- 1       10. Awarding Plaintiffs and the Classes injunctive relief, including but not limited
- 2            to, ensuring that Netflix obligates the Netflix contestants to destroy all records
- 3            in its possession, custody, or control;
- 4       11. Ordering Netflix to disgorge revenues and profits wrongfully obtained from the
- 5            Netflix Prize disclosure;
- 6       12. Awarding Plaintiffs and members of the Classes punitive damages;
- 7       13. Awarding Plaintiffs and members of the Class costs, interest, expenses and at-
- 8            torneys' fees for bringing and prosecuting this action;
- 9       14. With respect to all counts, damages in an amount to be determined at trial; and
- 10      15. Granting such other and further relief the Court deems just and proper.

11       **WHEREFORE**, Plaintiffs and the U.S. Injunctive Class respectfully pray that the Court enter  
12 judgment in their favor as follows:

- 13       1. With respect to all counts, declare the action to be a proper class action and des-
- 14            ignating Plaintiffs and their counsel as representatives of this Class;
- 15       2. Declare that Netflix will violate the ECPA if Netflix discloses subscribers' data,  
16            as contemplated;
- 17       3. Declare that Netflix will violate the VPPA if Netflix discloses subscribers' data,  
18            as contemplated;
- 19       4. Declare that Netflix will violate the CFAA if Netflix discloses subscribers' data,  
20            as contemplated;
- 21       5. As applicable to the Class *mutatis mutandis*, granting a preliminary and perma-
- 22            nent injunction restraining Defendants, their officers, agents, servants, employ-
- 23            ees, and attorneys, and those in active concert or participation with any of them  
24            from:
  - 25              (1) transmitting **any** information about U.S. Injunctive Class Plaintiffs or  
26                    class members, including but not limited to, video purchases, prefer-

1                   ences, ratings, zip code, age and/or gender of Netflix subscribers to  
2                   any third party;

3                   (2) transmitting **any** information about Plaintiffs' or class members'  
4                   video purchases, preferences, and ratings without fair, clear and con-  
5                   spicuous notice of the intent to transmit information, including a full  
6                   description of all information for transmission;

7                   (3) transmitting **any** information about Plaintiffs' or class members'  
8                   video purchases, preferences, and ratings to any other websites, in-  
9                   cluding Netflix without fair, clear and conspicuous opportunity to de-  
10                  cline the transmittal prior to any transmission of data or information;

11                 6. No damages are sought at present with respect to the U.S. Injunctive Class  
12                  Plaintiffs' claims;

13                 7. Awarding Plaintiffs and members of the Class costs, interest, expenses and at-  
14                  torneys' fees for bringing and prosecuting this action;

15                 8. Granting such other and further relief as the Court may deem just and proper.

16                 Respectfully submitted,

17                 DATED: December 17, 2009

By \_\_\_\_\_  
\_\_\_\_\_  
David C. Parisi

19                 Scott A. Kamber  
20                 David A. Stampley  
21                 KamberEdelson, LLC  
22                 11 Broadway, 22nd Floor.  
23                 New York, NY 10004  
24                 Telephone: (212) 920-3072  
25                 skamber@kamberedelson.com  
26                 dstampley@kamberedelson.com

27                 Joseph H. Malley  
28                 Law Office of Joseph H. Malley  
1045 North Zang Blvd  
Dallas, TX 75208  
Telephone: (214) 943-6100  
malleylaw@gmail.com

29                 David Parisi (SBN 162248)  
30                 Suzanne Havens Beckman (SBN 188814)

1 Parisi & Havens LLP  
15233 Valleyheart Drive  
2 Sherman Oaks, California 91403  
Telephone: (818) 990-1299  
3 dcparisi@parisihavens.com  
shavens@parisihavens.com

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1  
2                   **JURY TRIAL DEMAND**  
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5                   The Plaintiffs hereby demand a trial by jury of all issues so triable.  
6  
7

8                   Respectfully submitted,  
9  
10

11                  DATED: December 17, 2009

12                  By:   
13                  David C. Parisi

14                  Scott A. Kamber  
15                  David A. Stampley  
16                  KamberEdelson, LLC  
17                  11 Broadway, 22nd Floor.  
18                  New York, NY. 10004  
19                  Telephone: (212) 920-3072  
20                  skamber@kamberedelson.com  
21                  dstampley@kamberedelson.com

22                  Joseph H. Malley  
23                  Law Office of Joseph H. Malley  
24                  1045 North Zang Blvd  
25                  Dallas, TX 75208  
26                  Telephone: (214) 943-6100  
27                  malleylaw@gmail.com

28                  David Parisi (SBN 162248)  
29                  Suzanne Havens Beckman (SBN 188814)  
30                  Parisi & Havens LLP  
31                  15233 Valleyheart Drive  
32                  Sherman Oaks, California 91403  
33                  Telephone: (818) 990-1299  
34                  dcparisi@parisihavens.com  
35                  shavens@parisihavens.com